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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35291

**STERLITE (USA), INC.
- ACQUISITION AND OPERATION EXEMPTION
COPPER BASIN RAILWAY, INC., LINE
IN PINAL AND GILA COUNTIES, AZ**



PETITION FOR WAIVER OF 49 C.F.R. § 1150.32(e)

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**SURFACE
TRANSPORTATION BOARD**

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Dated: August 14, 2009

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Sterlite (USA), Inc. (“Sterlite”), a Delaware non-carrier, is filing a Verified Notice of Exemption in this docket, regarding its proposed acquisition of the rail lines of Copper Basin Railway, Inc. (“CBRY”). In light of the fact that Sterlite does not intend to change existing operations on CBRY’s lines, that the proposed acquisition would not affect the terms or conditions of employment for any CBRY employees, who in any event have been given notice of the proposed transaction, Sterlite respectfully requests that the Board waive the provisions of 49 C.F.R. § 1150.32(e), so that the exemption applicable to the transaction may become effective at the end of 30 days from the filing of the Notice, and so that Sterlite may consummate the transaction as soon as possible after the expiration of that 30-day period and after satisfaction of all applicable conditions to closing under the Settlement and Purchase and Sale Agreement among ASARCO LLC; AR Silver Bell, Inc.; CBRY; ASARCO Santa Cruz, Inc.; Sterlite; and Sterlite Industries (India), Ltd (including confirmation of the plan in bankruptcy of which that Agreement is part).

CBRY is a wholly owned subsidiary of ASARCO LLC (“ASARCO”). ASARCO and certain of its affiliates (together, the “Debtors”) are the subject of the bankruptcy proceeding in *In re ASARCO LLC*, (Case No. 05-21207), currently pending before the United States

Bankruptcy Court for the Southern District of Texas. In connection with the proposed reorganization of the Debtors, a Settlement and Purchase and Sale Agreement (“PSA”) among ASARCO; AR Silver Bell, Inc.; CBRY; ASARCO Santa Cruz, Inc.; Sterlite; and Sterlite Industries (India), Ltd, was executed on or about March 9, 2009, providing among other things for the acquisition by Sterlite of the rail assets of CBRY.¹ With the permission of ASARCO and CBRY, Sterlite’s notice of the proposed transaction pursuant to 49 C.F.R. § 1150.32(e) was posted at the CBRY workplace on August 14, 2009.²

Closing under the PSA cannot take place unless and until the Debtors’ Sixth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, as Modified (“Debtors’ Plan”), is approved by the Bankruptcy Court. That court initiated a confirmation hearing on the Debtors’ Plan and on two alternative plans on August 10, 2009. The Bankruptcy Court and the United States District Court for the Southern District of Texas are expected to issue decisions confirming one of the plans before the end of the year, and may do so before expiration of the 60 day notice period provided by 49 C.F.R. § 1150.32(e).

Sterlite has no current plans to make any changes to rail operations as they are now conducted by CBRY on the subject lines. It therefore intends to offer employment to all CBRY employees working on the property at the time of its acquisition, with the same compensation and under the same terms and conditions of employment provided by CBRY.³ Thus, although the employees of CRBY would be employed by a different corporate entity following consummation of the transaction, Sterlite does not foresee any changes resulting as a result of

¹ CBRY is not itself in bankruptcy.

² A copy of that notice is attached to the Verified Notice of Exemption as Exhibit A.

³ Under the PSA, Sterlite is required to offer employment to CBRY’s non-union employees on terms that, in the aggregate, are substantially equivalent to those provided to such non-union employees prior to the closing.

that transaction. The employees would continue to work in the same positions, with the same duties, for the same wages, and at the same location.

From the point of view of CBRY's employees, Sterlite's proposed acquisition of CBRY's lines is therefore one of form rather than of substance. When the Board issued the notice requirement, it explained that it was doing so because a proposed line acquisition "usually means ...that employees on the lines that have been sold are forced to make career choices – such as whether they will accept employment on the new carrier or retain whatever rights they have to exercise seniority or later be reemployed on the seller's lines – in a very short period of time." *Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902 – Advance Notice of Proposed Transactions*, 2 S.T.B. 592, 597 (1997). In this case, however, the only choice that CBRY's employees would face is the choice whether to accept the status quo or to seek opportunities elsewhere – which is exactly the same choice they have now, as employees of CBRY. This kind of transaction, which would maintain that status quo, is one for which a waiver is appropriate, and of the kind for which the Board has granted waivers under similar circumstances in the past.⁴

⁴ E.g., *ARZC Operating Co. – Acquisition & Operation Exemption – ParkSierra Corp.*, STB Finance Docket No. 34198 (STB served May 14, 2002); *CFNR Operating Co. – Acquisition & Operation Exemption – ParkSierra Corp.*, STB Finance Docket No. 34199 (STB served May 14, 2002); *PSAP Operating Co. – Acquisition & Operation Exemption – ParkSierra Corp.*, STB Finance Docket No. 34200 (STB served May 14, 2002); *Lake Michigan & Ind. R.R. – Acquisition & Operation Exemption – Keystone R.R. [Request for Waiver of 49 C.F.R. 1150.32(e)]*, STB Finance Docket No. 34140 (STB served Dec. 27, 2001); *Keystone R.R. – Acquisition & Operation Exemption – Keystone R.R.*, STB Finance Docket No. 34157 (STB served Dec. 27, 2001); *Patapsco & Back Rivers R.R. – Acquisition & Operation Exemption – Patapsco & Back Rivers R.R.*, STB Finance Docket No. 34159 (STB served Dec. 27, 2001).

WHEREFORE, Sterlite respectfully requests that the Board waive the requirements of 49 C.F.R. § 1150.32(e) so that the exemption may become effective with respect to the proposed acquisition by Sterlite of CBRY's rail lines upon the expiration of 30 days from the filing of the Verified Notice of Exemption, so that consummation of the proposed transaction may take place as soon as possible after the later of (1) the expiration of that 30-day period, or (2) confirmation of the Debtor's Plan by the Bankruptcy Court and the District Court and satisfaction of all conditions on Closing provided in the PSA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Cunningham", is written over a horizontal line.

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